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Federal Communications Commission  
Office of Secretary

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of

Advanced Television Systems  
and Their Impact upon the  
Existing Television Broadcast Service

)  
) **DOCKET FILE COPY ORIGINAL**  
) MM Docket No. 87-268  
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To: The Commission

**PETITION FOR RECONSIDERATION**

SL Communications, Inc. ("SL"), by its attorneys and pursuant to Section 1.106 of the Commission's Rules, hereby petitions for reconsideration of the Fifth Report and Order, MM Docket No. 87-268, released April 21, 1997 ("Fifth Order") and the Sixth Report and Order, MM Docket No. 87-268, released April 21, 1997 ("Sixth Order") (sometimes collectively referred to as "Orders"). In support thereof, SL states as follows.

**I. BACKGROUND**

1. SL is a party to the comparative hearing proceeding in MM Docket No. 85-269, wherein the Commission is seeking to select a permittee for a new UHF television station on NTSC Channel 52 at Blanco, Texas. In that proceeding, SL, along with Dorothy O. Schulze and Deborah Brigham, a General Partnership ("DSDB"), which has filed an application in the proceeding (File No. BPCT-850320KG), submitted a Joint Petition for Leave to Amend and for Grant of Application, on November 9, 1995. The Joint Petition requested that the Commission substitute SL for DSDB as the applicant and grant SL a construction permit for the new television

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station. Upon such grant, SL has advised the Commission that it is ready, willing and able to construct the new station at the earliest possible time.

2. After considering the Joint Petition for more than a year, the Commission, on February 28, 1997, issued its decision in Dorothy O. Schulze and Deborah Brigham, a General Partnership, FCC 97-22, released February 28, 1997. Therein, the Commission denied the Joint Petition, denied a Petition for Reconsideration filed by DSDB, and terminated the proceeding.

3. Subsequent to the decision, SL and DSDB filed a timely Petition for Reconsideration arguing that the Commission erred in its result and should have adopted the reasoning of Chairman Hundt in his Separate Statement to the February 28 decision, which would have resulted in the grant of the Joint Petition and the award of the permit to SL. DSDB also filed a timely Notice of Appeal with the United States Court of Appeals for the District of Columbia Circuit (Case No. 97-1193).<sup>1</sup>

## I. ARGUMENT

4. In the Sixth Further Notice of Proposed Rulemaking, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996) ("Rulemaking"), the Commission proposed a Table of Allotments for the implementation of digital television ("DTV"). By this Table, the Commission established the basis on which broadcast licensees and permittees will receive a second channel on which to introduce DTV while also continuing to transmit analog signals. The allotments made in the Rulemaking were premised on a cut-off date of October 24, 1991, with all licensees, permittees or applicants

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<sup>1</sup>On May 1, 1997, the Commission filed a Motion to Dismiss the appeal taken by DSDB arguing that the appeal was premature in light of the pending Petition for Reconsideration.

on file as of that date and subsequently receiving broadcast licenses, being entitled to a DTV channel.

5. Applying this policy, the Commission considered the Blanco allotment already on the existing Television Table of Allotments. Recognizing that an application had been filed well before October 24, 1991, the Commission proposed that Channel 52 at Blanco, Texas also receive a DTV allotment on Channel 45.

6. To the best of SL's knowledge, no party filing comments in response to the Rulemaking opposed the DTV allotment at Blanco. However, when the Sixth Order was released, the DTV allotment for Blanco was no longer contained in the proposed Table of Allotments. Reviewing the Orders, while no reference to Blanco is made, one is left to understand that the policy dealing with eligible broadcasters, contained in the Fifth Order, is what is responsible for this change.

7. Apparently reading Section 201 of the Telecommunications Act of 1996, the Commission felt constrained to reorder its priorities and eliminate the 1991 date. Instead, the criteria it applied is that a party need only have a construction permit or license as of April 3, 1997. Section 73.624(a). However, in doing so, the Commission, in footnote 26 to the Fifth Order, states that it will "give particular consideration for assigning temporary DTV channels to new licensees who applied on or before October 24, 1991, given the reliance that these parties may have placed on rules we adopted before passage of the 1996 Act."

8. SL submits that the footnote 26 solution is not acceptable. The Blanco proceeding has gone on for more than 12 years. During that period, the residents of Blanco have had the expectation of new television transmission service for their community. Since 1991, they have expected that this service will be both analog and digital, when the latter service comes into effect.

Now, the Commission is removing the certainty that Blanco will receive DTV service if a construction permit is awarded. This is clearly at odds with the commitments the Commission has made and, more importantly, the Commission's own obligations under Section 307(b) to allot broadcast service among states and communities "as to provide a fair, efficient, and equitable distribution of radio services to each of the same." SL submits that the initial allotment of television service to Blanco, after notice and comment rulemaking, represented a determination of the need to provide service to the community and that the Commission cannot now remove such service without further notice and comment rulemaking dealing with why such service should be eliminated.

9. What further compounds this problem is that the decision to remove the Blanco allotment is at odds with the entire tenor of the Sixth Order. Throughout that decision, the Commission makes clear that it is accommodating all parties and that there will be possibly be spectrum available for such secondary users as translators and low power television stations. However, with spectrum available, the Commission sees fit to ignore an allotment that has been actively sought for as long as the parties have sought Blanco is inequitable. Clearly, DTV spectrum should be available so long as there exists the possibility of a Blanco permittee.

10. Making available a DTV frequency at Blanco, until MM Docket No. 85-269 is fully and finally resolved, is consistent with the Commission's handling of the implementation of the AM expanded band. In Implementation of the AM Expanded Band Allotment Plan, FCC 97-68, released March 17, 1997, the Commission responded to the argument that Station WJRZ(AM), Toms River, New Jersey, should be removed from the allotment proposal because the Commission had deleted the Station's call sign due to the failure to construct the radio station on

a timely basis. The party that had argued to the Commission that Station WJRZ(AM) be removed from the allotment proposal claimed that such a result would benefit the Commission's stated goal of reducing congestion. The request was denied (*id.* at ¶ 14) upon the basis that such a result should only occur if and when the "cancellation of the WJRZ construction permit becomes final, *i.e.*, beyond administrative and judicial review..." SL agrees and urges the Commission to reconsider its decision and adopt a similar result in this instance.

11. A reading of the Orders evidences the importance of providing full-power television broadcast stations with a DTV allotment. Under the terms of the Orders, there will come a day when only the DTV channel allotment will remain. It makes no sense for any broadcaster to invest in a new station without assurance that a DTV allotment will be available. The parties to the Blanco proceeding, and the community itself, should not be prejudiced by the long delays on the Commission's part in reaching a final result in this matter. Until there comes a time when there is no longer a possibility that the Blanco allotment will be filled, there should be a DTV allotment

assigned to it. This is the only fair and equitable result and should be accomplished at the earliest possible time.

Respectfully submitted,

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